(22,283.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 662.

LAWRENCE E. SEXTON, AS TRUSTEE IN BANKRUPTCY OF KESSLER & COMPANY, APPELLANT,

vs.

LEOPOLD LOUIS DREYFUS, LOUIS LOUIS DREYFUS, AND CHARLES LOUIS DREYFUS, COMPOSING THE FIRM OF LOUIS DREYFUS & COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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United States Circuit Court of Appeals for the Second Circuit.

In the Matter of ALFRED KESSLER et al., Composing the Firm of Kessler & Company, Bankrupts; Lawrence E. Sexton, as Trustee, etc., Appellant.

(Claim of Dreyfus & Company.)

Transcript of Record.

Appeal from the District Court of the United States for the Southern District of New York.

Printed under the Direction of the Clerk.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Feb. 3, 1910. William Parkin, Clerk.

1 District Court of the United States for the Southern District of New York.

In Bankruptcy.

In the Matter of ALFRED KESSLER, RUDOLF E. F. FLINSCH, and William K. Gillett, Composing the Firm of Kessler & Company, Bankrupts.

NEW YORK, *February* 3, 1909—10 a. m.

Hearing on Questions of the Trustee to the Claim of Louis Dreyfus & Company.

Present:

The Referee, Peter B. Olney, Esq.;
Wallace Macfarlane, Esq., by Mr. Gilman, for the trustee;
Lorenzo Semple, Esq., for the claimant.

Mr. SEMPLE: In regard to Cripple Creek collateral, the principal due as of November 8, 1907, according to the decree, is
2 $394,607.16; interest on same to date of sale, December 9, 1908, $25,715.23. Total, principal and interest, $420,322.39. Proceeds of sale of Cripple Creek collateral, $295,170. Auctioneer's fees, New York Trust Company allowance, Special Master and stenographer's fees, $2,873.43. Dividends upon preferred stock collected one day before the sale by Louis Dreyfus & Company, $14,704. Deficiency, being the difference between the principal and interest and the proceeds of sale and the expenses above set forth, $113,321.82.

The controversy between the trustee and Louis Dreyfus & Company relates to the item of $25,715.23, which was the interest. In regard to the Cincinnati, Hamilton & Dayton notes, principal due as of November 8, 1907, pursuant to decree, $45,664.02. Interest to date of sale, December 9, 1908, $2,975.77. Total, principal and interest $48,639.79. Proceeds of sale of $50,000 in notes at 52, $26,000. Deficiency, $22,639.79. The only figures in controversy between the trustee and Louis Dreyfus & Company is the interest, $2,975.77.

3 District Court of the United States, Southern District of New York.

In the Matter of ALFRED KESSLER, RUDOLF E. F. FLINSCH, and William K. Gillett, Composing the Firm of Kessler & Company, Bankrupts.

Claim of Louis Dreyfus & Co.

The petition of the Trustee herein for a re-examination of the claim of Louis Dreyfus & Company, having come on to be heard on February 3, 1909, and it appearing that the said claim is made up of five items, and that the sum of $68,493.13 is unsecured, and that the sum of $47,755.62 is secured by certain collateral of Daimler Mfg. Company, which has not yet been liquidated; that an item of $19,962.61 is secured by collateral of the Orleans County Quarry Company, which has not yet been liquidated; that an item of $394,607.16, due as of Nov. 8, 1907, was secured by certain collateral which was duly sold by the claimant on Dec. 9, 1908, for $295.170; and that the expenses upon the said sale were $2,873.43, and the dividends upon the collateral were collected by the claimant, amounting to $14,704, and that the interest upon the claim from the date of the filing of the petition in bankruptcy herein
4 to the date of the sale, was $25,715.23; and that the claim, with interest less the net proceeds of sale and collection of dividends, amounts to $113,321.82; and that an item of $45,664.02 was due on Nov. 8, 1907; and that the certain collateral held by the claimant was duly sold by it on Dec. 9, 1908, for $26,000; and that the interest upon the said claim from the date of the filing of the petition in bankruptcy herein, to the date of the sale, was $2,975.77; and that the difference between the claim, with interest to the date of sale, and the proceeds of the sale, is $22,639.79.

It is, on motion of Lorenzo Semple, Esq., counsel for the claimant:

Ordered that the said claim be, and the same hereby is allowed for the purpose of a declaration of the dividend herein at the sum of $204,454.74; and that the dividend upon the remaining portion of the claim secured by the Daimler collateral and by the Orleans Quarry collateral, to-wit, the sum of $67,718.23, be reserved until the liquidation of the said collateral.

PETER B. OLNEY, *Referee.*

Apr. 6, '09.

5 District Court of the United States, Southern District of New York.

In the Matter of ALFRED KESSLER, RUDOLF E. F. FLINSCH, and William K. Gillett, Composing the Firm of Kessler & Company, Bankrupts.

Claim of Dreyfus & Co.

To the Honorable the District Court of the United States within and for the Southern District of New York:

The petition of Lawrence E. Sexton, as Trustee of the above-named bankrupts, respectfully shows: That your petitioner was duly appointed the trustee of the above-named bankrupts, on or about December 30, 1907, and as such was a party to certain proceedings pending before the Honorable Peter B. Olney, the referee in charge of said estate, to wit: a claim of Louis Dreyfus & Company, as a creditor of the above-named bankrupts.

Upon the hearing thereof, a final order was made by the said Referee, allowing said claim provisionally for the declaration of a div-dend at the sum of $204,454.74, to which your petitioner duly excepted.

Said order is erroneous in this, that it includes interest upon the face of the claim from and after the date of the filing of the petition in bankruptcy herein until the date upon which certain collateral securities held by the said claimant and applicable to the re-
6 duction of the face of the said claim were sold by the said claimant, which securities were less than the face value of the claim without interest.

Wherefore your petitioner prays that said order may be reviewed and modified, by deducting from the amount of the claim as so allowed the sum of $28,691.00, the interest since the date of the filing of the petition in bankruptcy herein, and that he be restored to all things he has lost by reason of said error.

LAWRENCE E. SEXTON,
As Trustee, &c., Petitioner.

SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

Lawrence E. Sexton, being duly sworn, says that he is the petitioner herein, that he has read the foregoing petition by him subscribed, and that the same is true according to the best of his knowledge, information and belief.

LAWRENCE E. SEXTON.

Sworn to before me this 24 day of April, 1909.

GEORGE H. GILMAN,
Notary Public, New York County.

7 In the District Court of the United States for the Southern District of New York.

In the Matter of ALFRED KESSLER, RUDOLF E. F. FLINSCH, and William K. Gillett, composing the firm of Kessler & Company, Bankrupts.

Claim of Louis Dreyfus & Co.

I, Peter B. Olney, one of the Referees in bankruptcy of this Court, do hereby certify, that in the course of the proceedings in the above-entitled cause before me the following question arose pertinent to the said proceedings:

Is a creditor holding security which is liquidated after the filing of the petition in bankruptcy, entitled to interest upon his claim after the date of the filing of said petition where the proceeds of the sale of the security are inadequate to pay the face of the claim?

The said question is certified by me for the determination of the Court.

The claim arose as follows:

At the time of the filing of the petition in bankruptcy, November 8, 1907, the claimants, Louis Dreyfus & Company, had two claims against the bankrupts. Against these claims they held certain collateral. A controversy arose as to their right to this collateral, which was finally determined in their favor; and by an
8 order of this Court, made on or about November 13, 1908, they were authorized to sell the said collateral and apply the proceeds to the reduction of their claims, and such sale was duly made on December 9, 1908.

The amount of the first claim was on November 8, 1907, the sum of		$394,607.16
Interest to the date of sale		25,715.23
Expenses of sale		2,873.23
		$423,195.82
Dividends collected	$14,704	
Proceeds of sale	295,170	
		309,874.00
Balance		$113,321.82

For which amount I allowed the first claim.

The amount of the second claim on November 8, 1907, was	$45,664.02
Interest to date of sale	2,975.77
	$48,639.79
Proceeds of sale	26,000.00
Balance	$22,639.79

For which amount I allowed the second claim.

The amount of interest allowed by me on the two claims is..... $28,691.00

Dated New York, June 14, 1909.

PETER B. OLNEY, *Referee.*

9 At a Stated Term of the District Court of the United States within and for the Southern District of New York, Held at the Court Rooms Thereof in the United States Court House and Post Office in the City of New York, on the 19th day of July, 1909.

Present: Honorable Learned Hand, District Judge.

In Bankruptcy.

In the Matter of ALFRED KESSLER, RUDOLF E. F. FLINSCH, and William K. Gillett, Composing the Firm of Kessler & Company, Bankrupts.

Claim of Louis Dreyfus & Company.

On all the testimony taken on behalf of Louis Dreyfus & Company, the claimants herein, at the hearing before Peter B. Olney, Esq., Referee, the order of the referee allowing the claim of said Louis Dreyfus & Company for the purpose of a dividend at the sum of $204,454.74, the petition of Lawrence E. Sexton, as Trustee of the above named bankrupts for review of the said order, the certificate of the referee thereon, and upon all the proceedings herein, and after hearing Mr. George H. Gilman for the trustee and
10 Mr. Lorenzo Semple for the claimant, now on motion of Coudert Brothers, Attorneys for the claimant, it is

Ordered, that the question certified by the referee be answered in the affirmative, and that the said order of the referee allowing the claim of the said Louis Dreyfus & Company for the purpose of the dividend at the sum of $204,454.74 be and the same hereby is in all respects affirmed.

LEARNED HAND, *D. J.*

United States District Court for the Southern District of New York.

In the Matter of ALFRED KESSLER, RUDOLF E. F. FLINSCH, and William K. Gillett, Composing the Firm of Kessler & Company, Bankrupts.

Lawrence E. Sexton, the trustee of the above-named bankrupts, conceiving himself aggrieved by the order made and entered herein on July 19, 1909, in the above entitled proceeding, wherein and whereby it was adjudged that the claim of Louis Dre-fus & Company against the estate of the above-named bankrupts be allowed for the

sum of $204,454.74, and that the question certified herein by the referee be answered in the affirmative, does hereby appeal
11 from such order to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of errors which is filed herein, and he prays that this appeal may be allowed, and that a transcript of the proceedings and papers upon which said order was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Second Circuit.

Dated New York, July 27, 1909.

WALLACE MACFARLANE,
Attorney for Lawrence E. Sexton, as Trustee, &c., Appellant, 26 Liberty Street, New York City.

The foregoing petition on appeal is granted and the claim in appeal herein is allowed.

Dated New York, July 27, 1909.

LEONARD HAND,
U. S. District Judge.

12 United States Circuit Court of Appeals for the Second Circuit.

In the Matter of ALFRED KESSLER, RUDOLF E. F. FLINSCH, and William K. Gillett, Composing the Firm of Kessler & Company, Bankrupts; Lawrence E. Sexton, as Trustee, &c., Appellant; Leopold Louis Dreyfus and Others, Composing the Firm of Louis Dreyfus & Company, Appellees.

And now comes Lawrence E. Sexton, as Trustee of the above-named bankrupts, by his attorney, Wallace Macfarlane, and filed the following assignment of errors upon which he will rely his appeal from the order entered herein on July 19, 1909.

First. That the District Court of the United States for the Southern District of New York erred in that it allowed the claim of Louis Dreyfus & Company against the estate of the above-named bankrupts for the sum of $204,454.74, or for any greater sum than $175,763.74.

Second. That the said Court erred in that it allowed interest to be computed upon the principal of the said claim after the
13 8th day of November, 1907, the day on which the petition in bankruptcy was filed herein.

Third. That the said Court erred in that it did not reduce the said claim to the said sum of $175,763.74.

Fourth. That the said Court erred in that it did not adjudge that the said claimants were not entitled to interest upon their claim after the date of the filing of said petition.

Fifth. That the said Court erred in that it permitted the said claimants to marshal the security held by them as collateral to said claim and to apply the security first to the interest and to prove the balance of the principal of the claim against the estate.

Sixth. That the said Court erred in that it did not adjudge that a creditor holding security which is liquidated after the filing of the petition in bankruptcy is not entitled to interest upon his claim after the filing of the petition, where the proceeds of the sale of the security is insufficient to pay the principal of the claim.

Wherefore, the said Lawrence E. Sexton, as such Trustee, prays that the said order be reversed, and that the said District Court may be ordered to enter an order reducing the said claim as allowed to the sum of $175,763.74, with costs to the trustee.

WALLACE MACFARLANE,
Attorney for Trustee-Appellant,
26 *Liberty Street, New York City.*

14 UNITED STATES OF AMERICA,
Second Judicial Circuit,
Southern District of New York, ss:

To Leopold Louis Dr-yfus, Louis Louis Dreyfus, and Charles Louis Dreyfus, composing the firm of Louis Dreyfus & Company, Greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the — day of August, 1909, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein Lawrence E. Sexton, as Trustee of Alfred Kessler, Rudolf E. F. Flinsch and William K. Gillett, composing the firm of Kessler & Company, Bankrupts, is the appellant, and you are the appellees, to show cause, if any there be, why the judgment and order in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand in the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this — day of July, in the year of our Lord, One Thousand Nine Hundred and Nine, and of the Independence of these United States the One Hundred and Thirty-fourth.

LEARNED HAND,
U. S. District Judge.

15 UNITED STATES OF AMERICA,
Southern District of New York, ss:

In the Matter of ALFRED KESSLER et al., Firm of Kessler & Company, Bankrupts; Lawrence E. Sexton, Trustee in Bankruptcy, Appellant.

Appeal from Order of July 19, 1909, Allowing Claim of Louis Dreyfus & Company, a Creditor.

I, Thomas Alexander, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby

Certify that the foregoing is a correct transcript of the record of the District Court in the above-entitled matter.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 21 day of January, in the year of our Lord one thousand nine hundred and ten, and of the Independence of the said United States the one hundred and *twenty* fourth.

[SEAL.] THOS. ALEXANDER, *Clerk*.

[9639 D.]

16 United States Circuit Court of Appeals for the Second Circuit, October Term, 1909.

No. 283.

In the Matter of ALFRED KESSLER et al., Bankrupts; LAWRENCE E. Sexton, as Trustee, etc., Appellant (Claim of Dreyfus & Company); The Same (Claim of Lloyds Bank, Ltd.).

Appeals from the District Court of the United States for the Southern District of New York.

Argued May 24, 1910; Decided June 14, 1910.

Before Lacombe, Ward, and Noyes, Circuit Judges.

Appeal from Orders of the District Court, Southern District of New York.

The referee certified to the District Court the following question: "Is a creditor holding security which is liquidated after the filing of the petition entitled to interest on his claim after the filing of the petition in bankruptcy where the proceeds of the sales of the security are inadequate to pay the face of the claim?"

The referee, furthermore, allowed the secured creditors to marshal the proceeds of their collateral securities first against interest
17 on the debts accruing up to the date of the liquidation of such securities and then allowed them to prove the balance of the principal of the claims after deducting the remainder of such proceeds.

The District Court answered the question certified in the affirmative and affirmed the order of the referee allowing the claims.

NOYES, *Circuit Judge* (after making the foregoing statement):

The majority of the court are of the opinion that the District Court was right in answering the question certified to it by the referee in the affirmative and in approving the allowance of the claims. But we think it unnecessary to add anything to the very careful consideration of the subject contained in Judge Hand's opinion.

The orders of the District Court are affirmed with costs upon the opinion of the District Judge.

Wallace Macfarlane, for Appellant.

Preston Cummings, Jr., and Lorenzo Semple, for Appellees.

18 United States Circuit Court of Appeals for the Second Circuit, October Term, 1909.

No. 284.

In the Matter of ALFRED KESSLER et al., Bankrupts; LAWRENCE E. Sexton, as Trustee, etc., Appellant (Claim of Dreyfus & Company); The Same (Claim of Lloyds Bank, Ltd.).

Appeals from the District Court of the United States for the Southern District of New York.

Argued May 24, 1910; Decided June 14, 1910.

Before Lacombe, Ward, and Noyes, Circuit Judges.

WARD, *Circuit Judge:*

I dissent from the opinion of the majority in this case. It is true that a creditor selling collateral is entitled to apply the proceeds first to the payment of interest. But the Act of 1898 provides that interest shall cease to run on claims against a bankrupt's estate after the date of filing the petition. If the creditor comes into bankruptcy to claim upon any unpaid balance, so much of the proceeds of collateral as have been applied to interest accruing
19 after the petition is filed should be deducted from that balance. He should not be allowed indirectly a preference over general creditors which he could not get directly. I think this view not only carries out the purpose and provisions of the Act, but has the additional advantage of conforming to the practice in England.

20 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Court Rooms, in the Post Office Building, in the City of New York, on the 24th Day of June, One Thousand Nine Hundred and Ten.

Present: Hon. E. Henry Lacombe, Hon. Henry G. Ward, Hon. Walter C. Noyes, Circuit Judges.

In the Matter of ALFRED KESSLER et al., Bankrupts; LAWRENCE E. SEXTON, as Trustee, etc., Appellant (Claim of Dreyfus & Co.).

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is affirmed with costs.

E. H. L. It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

21 Endorsed: United States Circuit Court of Appeals, Second Circuit. In re Alfred Kessler et al. (Dreyfus & Co.) Order for Mandate. United States Circuit Court of Appeals Second Circuit. Filed Jun- 24, 1910. William Parkin, Clerk.

22 United States Circuit Court of Appeals for the Second Circuit.

In the Matter of ALFRED KESSLER and Others, Composing the Firm of Kessler & Company, Bankrupts; Lawrence E. Sexton, as Trustee, &c., Appellant; Leopold Louis Dreyfus and Others, Appellees.

Please take notice that the annexed proposed findings of fact and conclusions of law will be presented to this court for settlement at the office of the Clerk of this Court in the Post Office Building, in the Borough of Manhattan, on June 24, 1910, at eleven o'clock.

Dated New York, June 22, 1910.

Yours, &c., WALLACE MACFARLANE,
Attorney for Appellant, 26 Liberty Street, New York.

To Messrs. Coudert Brothers, Attorneys for Appellees.

23 United States Circuit Court of Appeals for the Second Circuit.

In the Matter of ALFRED KESSLER, RUDOLF E. F. FLINSCH, and William K. Gillett, Composing the Firm of Kessler & Company, Bankrupts; Lawrence E. Sexton, as Trustee, &c., Appellant; Leopold Louis Dreyfus and Others, Composing the Firm of Louis Dreyfus & Company, Appellee.

Findings of Fact and Conclusion of Law Pursuant to General Order in Bankruptcy XXXVI.

First. An involuntary petition in bankruptcy was filed herein against Kessler & Co. on November 8, 1907, and they were thereafter duly adjudicated bankrupts.

Second. The claimants, Leopold Louis Dreyfus and others, filed a proof of claim herein made up of several items among others an item $394,607.16 due as of November 8, 1907, against which they held certain collateral consisting of stock of the Cripple Creek Central Railway Company, and another item of $45,664.02 due as of November 8, 1907, against which they held certain collateral security consisting of notes of the Cincinnati, Hamilton & Dayton Railroad Company.

Third. This collateral was sold on December 9, 1908.
24 The Cripple Creek collateral realized $295,170.00, less expenses of sale, $2,873.43, and the Cincinnati, Hamilton & Dayton notes realized $26,000.00.

Fourth. The claimants also collected, after November 8, 1907, dividends on the Cripple Creek stock aggregating $14,704.00.

Fifth. The interest upon $394,607.16 from November 8, 1907, to December 9, 1908, is $25,715.23, and the interest upon $45,664.02 for the same period is $2,975.77.

Sixth. Dreyfus & Co. applied the proceeds of the security first to paying the interest which had accrued on their claims subsequent to November 8, 1907, the date when the petition was filed; and claimed that they should be allowed dividends on the difference between the principal of their claims and the remainder of the proceeds of the security, to-wit, (on both claims) $135,961.61.

Seventh. The referee allowed the claims of Dreyfus & Co. for dividends as follows:

First item: Claim Nov. 8, 1907.....		$394,607.16	
Interest to the date of sale.....		25,715.23	
		$420,322.39	
Net proceeds of sale....	$292,296.57		
Dividends	14,704.00		
		307,000.57	
			113,321.82
Second item: Claim Nov. 8, 1907.....		$45,664.02	
Interest to the date of sale.....		2,975.77	
		$48,639.79	
Net proceeds of sale.....	$26,000	26,000.00	
			22,639.79
			$135,961.61

25 and on the trustee's petition, certified to the District Court the following question:

"Is a creditor holding security which is liquidated after the filing of the petition in bankruptcy, entitled to interest upon his claim after the date of the filing of said petition, where the proceeds of the sale of the security are inadequate to pay the face of the claim?"

The District Court answered the question in the affirmative; and the trustee appealed to the Circuit Court of Appeals.

Conclusion of Law.

Dreyfus & Co. are entitled to be allowed dividends upon the unpaid balances of their claims as settled by the referee, to-wit, upon the sum of $113,321.82 on the first item, and $22,639.79 on the second item: in all, upon $135,961.61.

E. HENRY LACOMBE, *C. J.*
WALTER C. NOYES, *C. J.*

Endorsed: United States Circuit Court of Appeals, for the Second Circuit. In the Matter of Alfred Kessler, Rudolf E. F. Flinsch and William K. Gillett, composing the firm of Kessler & Company, Bankrupts. Lawrence E. Sexton as Trustee, &c., Appellant. Leopold Louis Dreyfus and others, composing the firm of Louis Dreyfus & Company, Appellee. Findings of Fact and Conclusion of Law of Circuit Court of Appeals. Wallace Macgarlane, attorney for the Trustee, 26 Liberty Street, New York, N. Y. Service of a copy of the within findings of fact and conclusions of law is hereby admitted this 22nd day of June, 1910. Coudert Brothers, Att'ys for Louis Dreyfus & Co. United States Circuit Court of Appeals Second Circuit. Filed Jul- 7 1910. William Parkin Clerk.

26 The United States Circuit Court of Appeals for the Second Circuit.

In the Matter of Alfred Kessler, Rudolf E. F. Flinsch, and William K. Gillett, Composing the Firm of Kessler & Company, Bankrupts; Lawrence E. Sexton, as Trustee, &c., Appellant; Leopold Louis Dreyfus, Louis Louis Dreyfus, and Charles Louis Dreyfus, Composing the Firm of Louis Dreyfus & Company, Appellees.

Petition for Appeal.

Now comes the appellant Lawrence E. Sexton, as trustee in bankruptcy of the bankrupts above named, and conceiving himself aggrieved by the final decree heretofore made and entered by this court against him and in favor of the appellees, Louis Dreyfus & Co., on or about the 24th day of June, 1910, and having duly filed in the office of the clerk of this court his assignment of errors, prays that an appeal may be allowed in the above-entitled proceeding to the Supreme Court of the United States, and that a transcript of the record, proceedings and papers upon which said appeal was made, duly authenticated, be sent to said Supreme Court of the United States.

Dated, New York, July 15th, 1910.

WALLACE MACFARLANE,
Att'y for Lawrence E. Sexton, as Trustee in Bankruptcy of Kessler & Co., Appellant.

27 And now, to-wit, on the 16 day of July, 1910, it is ordered that the foregoing application be granted and the appeal allowed as prayed for.

Dated, New York, July 16, 1910.

WALTER C. NOYES,
Judge of United States Circuit Court and of the U. S. Circuit Court of Appeals for the Second Circuit.

Endorsed: United States Circuit Court of Appeals for the Second Circuit. In the Matter of Alfred Kessler, Rudolf E. F. Flinsch and William K. Gillett, composing the firm of Kessler & Co. Bankrupts. Lawrence E. Sexton, as trustee, etc., Appellant. Leopold

Louis Dreyfus, Louis Dreyfus and Charles Louis Dreyfus, composing the firm of Louis Dreyfus & Co., Appellees. Petition for appeal. Wallace Macfarlane, Attorney for Lawrence E. Sexton, as trustee in bankruptcy of Kessler & Co., Appellant, 26 Liberty Street, New York, N. Y. United States Circuit Court of Appeals Second Circuit. Filed Jul- 19 1910. William Parkin Clerk.

28 The United States Circuit Court of Appeals for the Second Circuit.

In the Matter of ALFRED KESSLER, RUDOLF E. F. FLINSCH, and William K. Gillett, Composing the Firm of Kessler & Company, Bankrupts; Lawrence E. Sexton, as Trustee, &c., Appellant; Leopold Louis Dreyfus, Louis Louis Dreyfus, and Charles Louis Dreyfus, Composing the Firm of Louis Dreyfus & Company, Appellees.

Assignments of Error.

And now comes Lawrence E. Sexton as Trustee aforesaid, appellant, by Wallace Macfarlane, his attorney, and respectfully represents that he feels himself to be aggrieved by the proceedings and decree in the above-entitled cause in the United States Circuit Court of Appeals for the Second Circuit, and says, that in the record and proceedings therein there is manifest error in each and every one of the following rulings of the court, to wit:—

First. In that the said Circuit Court of Appeals ordered, adjudged and decreed that the order of the District Court of the United States for the Southern District of New York, entered herein on
29 the 19th day of July, 1909, should be affirmed with costs, said order of the District Court having ordered that the question certified by the referee should be answered in the affirmative, and that the order of the referee allowing the claim of Louis Dreyfus & Co., for the purpose of a dividend, should be in all respects affirmed.

Second. In that the said Circuit Court of Appeals did not order, adjudge and decree that the said order of the District Court for the Southern District of New York should be reversed.

Third. In that the said Circuit Court of Appeals decided that a creditor holding security which is liquidated after the filing of the petition in bankruptcy is entitled to interest on his claim after the date of the filing of such petition, where the proceeds of the sale of the security are inadequate to pay the face of the claim.

Fourth. In that the said Circuit Court of Appeals decided that the portion of the appellees' secured claims upon which they should be paid dividends under section 57 (*h*) of the United States Bankruptcy Law should be determined by adding to the claims as allowed at the time of filing the petition in bankruptcy interest subsequently accruing between the date of filing the petition and the last
30 sale of the collateral, and by crediting upon such total principal and interest the total proceeds of the sale of the col-

lateral and the earnings thereof, if any, collected thereon after the filing of the petition; and that dividends should be paid from the bankrupt estate upon the remainder.

Wherefore, the appellant respectfully prays that the errors assigned be examined and corrected by this Honorable Court, and that the judgment entered herein by the District Court and the Circuit Court of Appeals be reversed, and the cause remanded for further proceedings not inconsistent with the law.

Dated, New York, July 15, 1910.

WALLACE MACFARLANE,
Att'y for Lawrence E. Sexton, as Trustee in Bankruptcy of Kessler & Co., Appellant,
26 Liberty Street, New York, N. Y.

Endorsed: United States Circuit Court of Appeals for the Second Circuit. In the Matter of Alfred Kessler, Rudolf E. F. Flinsch and William K. Gillette, composing the firm of Kessler & Co., Bankrupts. Lawrence E. Sexton, as Trustee, etc., Appellant. Leopold Louis Dreyfus, Louis Louis Dreyfus and Charles Louis Dreyfus, composing the firm of Louis Dreyfus & Co., Appellees. Assignments of Error. Wallace Macfarlane, Attorney for Lawrence E. Sexton, as Trustee in Bankruptcy of Kessler & Co., Appellant, 26 Liberty Street, New York, N. Y. United States Circuit Court of Appeals for the Second Circuit. Filed Jul- 19, 1910. William Parkin, Clerk.

31 UNITED STATES OF AMERICA.
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 30 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Matter of Alfred Kess-er et al., composing the firm of Kessler & Co., Lawrence E. Sexton, as Trustee, etc., Appellant, (Dreyfus & Co. claim) as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 26th day of July, in the year of our Lord One Thousand Nine Hundred and ten and of the Independence of the said United States the One Hundred and thirty-fourth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

32 UNITED STATES OF AMERICA, *ss:*

To Leopold Louis Dreyfus, Louis Louis Dreyfus, and Charles Louis Dreyfus, composing the firm of Louis Dreyfus & Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof pursuant to an appeal filed in the Clerk's Office of the United States Circuit Court of Appeals for the Second Circuit, wherein Lawrence E. Sexton, as Trustee in Bankruptcy of Kessler & Company, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness Hon. John M. Harlan, an Associate Justice of the Supreme Court of the United States, this 16th day of July, in the year of our Lord one thousand nine hundred and ten.

WALTER C. NOYES,
Judge of the United States Circuit Court and the United States Circuit Court of Appeals for the Second Circuit.

33 [Endorsed:] The United States Circuit Court of Appeals for the Second Circuit. In the Matter of Alfred Kessler, Rudolf E. F. Flinsch and William K. Gillett, composing the firm of Kessler & Co., Bankrupts. Lawrence E. Sexton, as Trustee, &c., Appellant. Leopold Louis Dreyfus, Louis Louis Dreyfus and Charles Louis Dreyfus, composing the firm of Louis Dreyfus & Co., Appellees. Original. Citation. Wallace Macfarlane, Attorney for Lawrence E. Sexton, as Trustee in Bankruptcy of Kessler & Co., Appellant, 26 Liberty Street, New York, N. Y. Service of the within citation is admitted July 21, 1910. Coudert Brothers, Att'ys for Louis Dreyfus & Co. United States Circuit Court of Appeals, Second Circuit. Filed Jul- 21, 1910. William Parkin, Clerk.

Endorsed on cover: File No. 22,283. U. S. Circuit Court Appeals, 2d Circuit. Term No. 662. Lawrence E. Sexton, as trustee in bankruptcy of Kessler & Company, appellant, vs. Leopold Louis Dreyfus, Louis Louis Dreyfus, and Charles Louis Dreyfus, composing the firm of Louis Dreyfus & Company. Filed August 2d, 1910. File No. 22,283.